U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33420090

Date: AUG. 26, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a construction entrepreneur, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, pursuant to Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Petitioner warranted a national interest waiver of the labor certification and job offer requirements for EB-2 classification. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our prior decision, incorporated here by reference, we concluded that the Petitioner had not established his eligibility for a national interest waiver based on the framework set out in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we determined that the Petitioner had not established that his endeavor, a comprehensive home building service, stood to sufficiently extend beyond his employees and clients such that its impact would be at a level commensurate with national importance. *See id.* (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance).

On motion, the Petitioner argues that we used an improper standard of proof beyond a preponderance of the evidence when evaluating the economic impact of his proposed endeavor. The Petitioner restates that the economic impacts of his construction and real estate company rise to the level of national importance because he is increasing the availability of affordable housing, an issue of national importance. However, the fact that a petitioner is operating in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance, and he has not met that burden.

The Petitioner's business plan highlights that the U.S. home construction and remodeling industry was projected to generate $124 billion in 2023. The Petitioner highlights that the employment of 12 individuals and revenue of $27 million over five years is a significant investment in the local economy. However, even if the Petitioner meets the revenue, staffing, and wage projections of his proposed endeavor, he has not established that it will have an economic impact that rises to the level of national importance. The Petitioner further states that he has filed for a patent to advance the second part of his proposed endeavor, the creation of two insulated cement block production facilities. While the Petitioner mentions the submission of the patent on motion, he has not provided further information regarding the project's viability or potential impact on the construction industry. Therefore, the Petitioner has not met his burden of proof in establishing that this part of his proposed endeavor would rise to the level of national importance on motion.

The Petitioner has not shown that his proposed endeavor will have the potential to employ a significant number of U.S. workers or otherwise offer substantial positive economic effects. *See id.* ("An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, . . . may well be understood to have national importance."). The Petitioner has not established, through sufficient probative evidence, that his endeavor would have broader implications in his field that would resonate on a national level. *See id.* (stating that national importance is evaluated through consideration of "potential prospective impact" and "broader implications"). We therefore conclude that the Petitioner has not establish that his proposed endeavor has national importance such that he is eligible for a national interest waiver under *Dhanasar*.[1]

The Petitioner's unsupported assertion that we used an incorrect standard of proof is insufficient to establish eligibility for the requested classification. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[1] In light of this conclusion, we declined to reach and reserved the Petitioner's remaining arguments concerning eligibility under *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).